

1
2
3
4
5
6
7
8 **BEFORE THE**
9 **STRUCTURAL PEST CONTROL BOARD**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. 2015-43

13 **TSCHAIKOWSKY BROWN**
14 **13757 Verbena Drive, Unit A**
15 **Desert Hot Springs, CA 92240**

DEFAULT DECISION AND ORDER

[Gov. Code, §11520]

16 **Operator's License No. OPR 12094**
17 **Field Representative License No. FR 42419**

Respondent.

18 **FINDINGS OF FACT**

19 1. On or about March 4, 2015, Complainant Susan Saylor, in her official capacity as the
20 Registrar/Executive Officer of the Structural Pest Control Board, Department of Consumer
21 Affairs, filed Accusation No. 2015-43 against Tschaikowsky Brown (Respondent) before the
22 Structural Pest Control Board. (A copy of the Accusation is attached as Exhibit A.)

23 2. On or about October 1, 2010, the Structural Pest Control Board issued Operator's
24 License No. OPR 12094 in Branch 2 to Respondent. The Operator's License was placed on
25 inactive status on July 30, 2013. The Operator's License was in full force and effect at all times
26 relevant to the charges brought in Accusation No. 2015-43 and will expire on June 30, 2016,
unless renewed.

27 3. On or about October 17, 2007, the Structural Pest Control Board (Board) issued Field
28 Representative License No. FR 42419 in Branch 2 to Respondent. On August 19, 2009, the Field

1 Representative License was upgraded to include Branches 2 and 3. On October 1, 2010, the Field
2 Representative License was downgraded to include Branch 3 only due to the issuance of a Branch
3 2 Operator's License. The Field Representative License was in full force and effect at all times
4 relevant to the charges brought in Accusation No. 2015-43 and will expire on June 30, 2016,
5 unless renewed.

6 4. On or about June 24, 2005, the Structural Pest Control Board issued Applicator's
7 License No. RA 43940 in Branches 2 and 3 to Respondent. On October 17, 2007, the
8 Applicator's License was downgraded to include Branch 3 only due to the issuance of a Branch 2
9 Operator's License, and was placed on inactive status. The Applicator's License was canceled on
10 June 24, 2008.

11 5. On or about March 13, 2015, Respondent was served by Certified and First Class
12 Mail copies of the Accusation No. 2015-43, Statement to Respondent, Notice of Defense, Request
13 for Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6, and
14 11507.7) at Respondent's address of record which, pursuant to Business and Professions Code
15 section 136, is required to be reported and maintained with the Board. Respondent's address of
16 record was and is:

17 13757 Verbena Drive, Unit A
18 Desert Hot Springs, CA 92240

19 6. Service of the Accusation was effective as a matter of law under the provisions of
20 Government Code section 11505, subdivision (c) and/or Business & Professions Code section
21 124.

22 7. On or about March 25, 2015, the aforementioned documents were returned by the
23 U.S. Postal Service undelivered. The address on the documents was the same as the address on
24 file with the Board. Respondent failed to maintain an updated address with the Board and the
25 Board has made attempts to serve the Respondent at the address on file. Respondent has not
26 made himself available for service and therefore, has not availed himself of his right to file a
27 notice of defense and appear at hearing.

28 ///

8. Government Code section 11506 states, in pertinent part:

(c) The respondent shall be entitled to a hearing on the merits if the respondent files a notice of defense, and the notice shall be deemed a specific denial of all parts of the accusation not expressly admitted. Failure to file a notice of defense shall constitute a waiver of respondent's right to a hearing, but the agency in its discretion may nevertheless grant a hearing.

9. Respondent failed to file a Notice of Defense within 15 days after service upon him of the Accusation, and therefore waived his right to a hearing on the merits of Accusation No. 2015-43.

10. California Government Code section 11520 states, in pertinent part:

(a) If the respondent either fails to file a notice of defense or to appear at the hearing, the agency may take action based upon the respondent's express admissions or upon other evidence and affidavits may be used as evidence without any notice to respondent.

11. Pursuant to its authority under Government Code section 11520, the Board finds Respondent is in default. The Board will take action without further hearing and, based on the relevant evidence contained in the Default Decision Evidence Packet in this matter, as well as taking official notice of all the investigatory reports, exhibits and statements contained therein on file at the Board's offices regarding the allegations contained in Accusation No. 2015-43, finds that the charges and allegations in Accusation No. 2015-43 are separately and severally found to be true and correct by clear and convincing evidence.

12. Taking official notice of its own internal records, pursuant to Business and Professions Code section 125.3, it is hereby determined that the reasonable costs for Investigation and Enforcement is \$492.50 as of April 2, 2015.

DETERMINATION OF ISSUES

1. Based on the foregoing findings of fact, Respondent Tschaikowsky Brown has subjected his Field Representative License No. FR 42419 to discipline.

2. The agency has jurisdiction to adjudicate this case by default.

3. The Structural Pest Control Board is authorized to revoke Respondent's Field Representative License based upon the following violations alleged in the Accusation which are supported by the Default Decision Investigatory Evidence Packet in this case.

1 a. Respondent's licenses are subject to disciplinary action under sections 498 and
2 8637 of the Code in that he secured his Operator's License by fraud, deceit, or knowing
3 misrepresentation of a material fact when he declared on his application for renewal that he
4 completed 20 hours of continuing education required for the renewal of his Operator's license.

5 b. Respondent's licenses are subject to disciplinary action under section 8641 of
6 the Code, and California Code of Regulations, title 16, section 1950, in that Respondent's
7 conduct violated Business and Professions Code section 8593, which required Respondent, as a
8 condition to the renewal of his Operator's License, to submit proof that he complete a minimum
9 of 16 hours of continuing education in pest control approved by the Board or equivalent activity
10 approved by the Board within the three-year renewal period.

11 ///

12 ///

13 ///

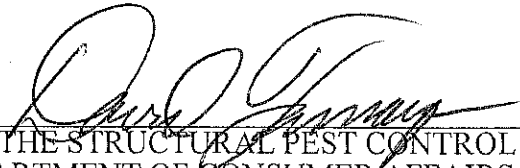
ORDER

IT IS SO ORDERED that Operator's License No. OPR 12094, and Field Representative License No. FR 42419, heretofore issued to Respondent Tschaikowsky Brown, are revoked.

Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a written motion requesting that the Decision be vacated and stating the grounds relied on within seven (7) days after service of the Decision on Respondent. The agency in its discretion may vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.

This Decision shall become effective on June 3, 2015.

It is so ORDERED May 4, 2015


FOR THE STRUCTURAL PEST CONTROL BOARD
DEPARTMENT OF CONSUMER AFFAIRS

DOJ Matter ID:SD2015700530

Attachment:
Exhibit A: Accusation